

1 JOHN B. SULLIVAN (State Bar No. 96742)
jbs@severson.com
2 ERIK KEMP (State Bar No. 246196)
ek@severson.com
3 MARY KATE KAMKA (State Bar No. 282911)
mkk@severson.com
4 SEVERSON & WERSON
A Professional Corporation
5 One Embarcadero Center, Suite 2600
San Francisco, California 94111
6 Telephone: (415) 398-3344
Facsimile: (415) 956-0439
7

8 Attorneys for Defendant ALLY
FINANCIAL INC.

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 JOSEPH RILEY and DANIELLE
13 RILEY, individually and on behalf of a
class of similarly situated persons,

14 Plaintiffs,

15 vs.

16 ALLY FINANCIAL, INC., fka GMAC,
17 a Corporation,

18 Defendant.

Case No. 3:14-cv-1035-LAB-DHB

**ALLY FINANCIAL INC.'S
AMENDED NOTICE OF MOTION
AND MOTION TO DISMISS OR,
ALTERNATIVELY, STAY ACTION**

Date: June 16, 2014

Time: 11:45 a.m.

Crtrm.: 14A

Judge: Hon. Larry Alan Burns

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21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

22 **PLEASE TAKE NOTICE** that on **June 16, 2014**, at **11:45 a.m.**, or as soon
23 thereafter as the matter may be heard, in Courtroom 14A of the above-entitled Court,
24 located at 333 West Broadway, San Diego, California 92101, defendant Ally
25 Financial Inc. will and hereby does move for an order dismissing plaintiffs Joseph
26 and Danielle Riley's complaint for failure to state a claim upon which relief can be
27 granted or, alternatively, to stay the action pending final resolution of the parallel
28 putative class action in *Ally Financial Inc., fka GMAC Inc. v. Angela C. Lazrovich*

1 *and related cross-action*, Superior Court of California, County of Santa Clara, Case
2 No. 111CV195659. This amended notice of motion and motion is filed and served in
3 light of the reassignment of the case from the Hon. Jeffrey T. Miller to the Hon.
4 Larry Alan Burns, and supersedes the original notice of motion and motion to
5 dismiss or, alternatively, stay the action that was set for Judge Miller's calendar.

6 The motion to dismiss is made under Rule 12(b)(6) of the Federal Rules of
7 Civil Procedure and is based on the ground that the complaint and each of its counts
8 fail to state a claim upon which relief can be granted against Ally because the Rileys
9 released Ally from the claims they attempt to assert here through the final approval
10 of the *Lazrovich* class action settlement. The motion to stay is made pursuant to the
11 Court's inherent authority to manage its docket and on the grounds that the
12 *Lazrovich* court enjoined the Rileys from pursuing the claims alleged here, that the
13 final judgment in *Lazrovich* will operate as *res judicata* and bar the claims asserted
14 here, that it would waste party and Court resources to allow this parallel action to
15 proceed after final approval has already been granted in *Lazrovich*, and on the other
16 grounds detailed in Ally's supporting memorandum.

17 The motions are based on this amended notice of motion and motion, the
18 previously filed memorandum of points and authorities (*see* Dkt. no. 11-1) and
19 declaration of Erik Kemp (*see* Dkt. nos. 11-2 & 11-3), the complaint and all other
20 pleadings and records on file in this action, and upon such other argument as may be
21 presented at any hearing on the motions.
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1 DATED: May 2, 2014

SEVERSON & WERSON
A Professional Corporation

4 By: /S/ Erik Kemp
5 Erik Kemp

6 Attorneys for Defendant
7 ALLY FINANCIAL INC.
8 Email: ek@severson.com
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